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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH FORD, Defendant and Appellant.	A140251 (Contra Costa. County Super. Ct. No. 51306703)

Joseph Ford was convicted of two felony counts of obstructing a police officer in the performance of his duties and one misdemeanor count of vandalism. He asserts the court erred when it instructed the jury that obstructing a police officer is a general intent crime and that voluntary intoxication is not a defense to it. He also contends the court violated Penal Code section 654[1] when it imposed consecutive terms on the two felony convictions. None of these assertions have merit, so we affirm.

BACKGROUND

The essential facts are not in dispute. Early on the morning of March 9, 2013, Ford, apparently under the influence of methamphetamine, caused a disturbance on West 2nd Street in Antioch. Police Officer Adrian Gonzalez arrived within minutes to see Ford throw a cinder block through the window of 817 West 2nd Street. A violent struggle ensued that, by the time Ford was ultimately subdued, involved five officers.

[1]Further statutory references are to the Penal Code.

Officer Gonzalez attempted to arrest Ford for vandalism but was deterred when Ford picked up and wielded a chair before setting it down and assuming a "bladed stance." Officer Lenderman arrived on the scene and warned Gonzalez that Ford had a knife. Gonzalez ordered Ford to display his hands and, when he failed to comply, tried to take him into custody. Ford grabbed onto a post and clung to it so tenaciously that it took the combined efforts of Officers Gonzalez and Lenderman to pull him free, even after the third officer to arrive, Corporal Wisecarver, discharged his taser on Ford.

Once dislodged, Ford fell face-first to the ground. As the officers, now joined by Sergeants Furhman and Barakos and Officer Martin, continued their efforts to subdue him, Ford resisted by trying to push himself up and grabbing at Officer Gonzalez. Officer Lenderman tried to control Ford's feet, but Ford kicked upward at him and managed to knock the officer off balance a couple of times. When Ford tried to turn toward Wisecarver, Sergeant Barakos struck him two or three times in the face.

Barakos and Gonzalez managed to handcuff one of Ford's wrists, but then Ford grabbed Barakos's hand. Barakos struck Ford's forearm with a flashlight two or three times and, when those blows proved unavailing, struck Ford's fingers and knuckles until he released his grip. Corporal Wisecarver applied a "carotid restraint" hold until Ford went limp, at which point he was handcuffed, placed in a body wrap restraint and taken to a hospital. A partially closed folding knife was found nearby where the confrontation started. Ford tested positive for methamphetamine.

The jury convicted Ford of two felony violations of section 69 for obstructing officers Gonzalez and Lenderman in the performance of their duties and one misdemeanor count of vandalism. He was acquitted of an additional felony count for obstructing Corporal Wisecarver and a related lesser included offense. This appeal timely followed.

DISCUSSION

I. The Court Properly Instructed The Jury On Intent and Voluntary Intoxication

Section 69 provides: "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, *or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty,* is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment." (Italics added.) Here, it is undisputed that the prosecution was premised on a "knowingly resists" theory of liability under the second prong of section 69. Ford contends the trial court erred when it instructed the jury that this violation was a general intent crime, and, therefore, that voluntary intoxication was not a defense. He is mistaken.

People v. Rasmussen (2010) 189 Cal.App.4th 1411 (*Rasmussen*) is dispositive on this point. Faced with similar facts and arguments, the court held that the second prong of section 69 defines a general intent crime. "The Supreme Court has explained that section 69 'sets forth two separate ways in which an offense can be committed. The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty.' [Citations.] 'The two ways of violating section 69 have been called "attempting to deter" and "actually resisting an officer." ' " (*Id.* at pp. 1417–1418.)

"The two types of offenses have different elements. [Citations.] For example, '[t]he first type of offense can be established by "[a] threat, unaccompanied by any physical force." [Citation.] It may involve "attempts to deter *either* an officer's *immediate* performance of a duty imposed by law *or* the officer's performance of such a[] duty at some time *in the future.*" [Citation.] If the threat is to deter the officer's performance of duty at a later time, "only the future performance of such duty must be lawful," which means it is unnecessary to decide whether the officer was lawfully performing duty at the time the threat was made. [Citation.] For the second type of

offense, the resistance must include "force or violence," and the officer had to be lawfully engaged in the performance of duty at the time of the defendant's resistance." (*Rasmussen, supra,* 189 Cal.App.4th at p. 1418.)

Because of this difference, *Rasmussen* explains, the "attempting to deter" offense requires specific intent, but "actually resisting" is a general intent crime. " 'When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent." (*Rasmussen, supra,* 189 Cal.App.4th at p. 1419.) The definition of the "actually resisting" offense in section 69 describes only the act of resisting an officer and does not require an intent to do a further act or achieve a future consequence, so the offense requires general, not specific, intent. (*Id*. at pp. 1419–1420.)

Ford asserts that *Rasmussen* and the cases on which it relied were wrongly decided because, in his view, those courts "failed to give effect to 'knowingly,' they failed to understand that the crime of 'actually resisting' an executive officer with force or violence requires an 'intent to do some further act or achieve some additional consequence . . . .,' i.e., to 'deter or prevent . . . [the officer] . . . 'in the performance of his duty.' " He argues "that anyone resisting someone he or she knows is an executive officer does 'intend to achieve a further consequence' " i.e., deterring or preventing the officer from performing his or her duty, because "no rational person would resist an officer just for the sake of resistance and without intending a further consequence."

We disagree. Ford's argument misinterprets and wrongly conflates the first and second prong offenses, only the first of which references an intent to achieve a future consequence. Moreover, *Rasmussen* expressly addressed the effect of the Legislature's inclusion of the "knowing" element in the second prong. " 'The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such

act or omission.' [Citation.] 'The use of the words knowingly and willfully in a penal statute usually define a general criminal intent. [Citation.] There can be specific intent crimes using the terms but the specific intent in those instances arises not from the words willfully or knowingly, but rather from the requirement in those offenses there be an intent to do a further act or achieve a future consequence.' " (*Rasmussen, supra,* 189 Cal.App.4th at p. 1419.)

Nothing in the statutory language supports Ford's hypothesis that the offense requires the specific intent to deter or prevent the officer from performing his or her duty. To the contrary, a violation of section 69's second prong requires only that one "knowingly resists" an officer performing his or her duty "by the use of force or violence." (§ 69.) Had the Legislature meant to include a further "intent to deter" element in the second as well as first prong offense, it knew how to do so. (See, e.g., *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 999.) "[W]e presume the Legislature intended everything in a statutory scheme, and we should not read statutes to omit expressed language or include omitted language." (*People v. Connor* (2004) 115 Cal.App.4th 669, 691.)

The trial court thus correctly instructed the jury that the section 69 counts were general intent crimes. Our conclusion disposes of Ford's further contention that the court erred when it instructed the jury that voluntary intoxication was no defense to the crime. As Ford acknowledges, voluntary intoxication is relevant only as it bears on whether the defendant had the requisite mental state for a *specific* intent crime. (See *People v. Roldan* (2005) 35 Cal.4th 646, 715, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421 fn. 22; *People v. Saille* (1991) 54 Cal.3d 1103, 1119–1120.)

The People argue that Ford forfeited his objection to the voluntary intoxication instruction when he conceded in the trial court that he was not asserting such a defense. Ford also conceded that the section 69 violations were general intent crimes. We nonetheless address the merits of Ford's claim of error because he asserts his counsel's concession was ineffective representation. That assertion is put to rest by our holding that the court instructed the jury correctly. "Counsel's failure to make a meritless

objection does not constitute deficient performance." (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1080.)

II. The Sentence Does Not Violate Section 654

Ford argues the court violated section 654 when it sentenced him to consecutive terms for counts one and three, resisting Officers Gonzalez and Lenderman, respectively. Ford argues the court should have stayed the sentence on count three because both counts were part of the same course of conduct with the single objective of avoiding arrest. Not so.

"An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) "[S]ection 654 prohibits punishment for two crimes arising from a single indivisible course of conduct. [Citation.] If all of the crimes were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be punished only once. [Citation.] If, however, a defendant had several independent criminal objectives, he may be punished for each crime committed in pursuit of each objective, even though the crimes shared common acts or were parts of an otherwise indivisible course of conduct. [Citation.] The defendant's intent and objective are factual questions for the trial court, and we will uphold its ruling on these matters if it is supported by substantial evidence." (*People v. Perry* (2007) 154 Cal.App.4th 1521, 1525.)

Here, the fatal weakness in Ford's argument lies in the "multiple victim" exception to section 654. " 'Under this exception, "even though a defendant entertains but a single principal objective during an indivisible course of conduct, he may be convicted and punished for each crime of violence committed against a different victim." [Citations.] The reason for the multiple victim exception is that "when a defendant ' "commits an act of violence with the intent to harm more than one person or by means likely to cause harm to several persons," his greater culpability precludes application of section 654.' " ' [Citation.]" (*People v. Centers* (1999) 73 Cal.App.4th 84, 99.)

Thus, "as a general rule, even though a defendant entertains but a single principal objective during an indivisible course of conduct, he may be convicted and punished for each crime of violence committed against a different victim. [Citation.] ' "[W]hether a crime constitutes an act of violence that qualifies for the multiple-victim exception to section 654 depends upon whether the crime . . . is defined to proscribe an act of violence against the person." ' " (*People v. Martin* (2005) 133 Cal.App.4th 776, 781–782.) Resisting arrest in violation of section 69 is such a crime (*id*. at pp. 781–783), so section 654 does not preclude consecutive sentences for Ford's acts of resistance against first Officer Gonzalez and then Officer Lenderman. It is simply irrelevant to this inquiry whether, as Ford maintains, he "was [un]aware of the number of officers he was resisting" during the melee. (See *People v. Centers, supra,* 73 Cal.App.4th at p. 99 [exception applies to crimes effected by means likely to harm multiple persons].)

DISPOSITION

The judgment is affirmed.

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Siggins,J.

We concur:

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McGuiness, P.J.

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Pollak, J.